

KILCOYNE & ASSOCIATES, LLC.
BY: MICHAEL O. PITT
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ATTORNEY FOR DEFENDANTS
Michael Picariello, M.D., Sarah
Fowler, M.D. and Ear, Nose and
Throat Assoc. of Chester County,
Inc.
184-632

**IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT
OF PENNSYLVANIA CIVIL ACTION**

JOSEPH DIFELICE

vs.

AETNA/U.S. HEALTHCARE, et al.

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No. 02-3641

NOTICE TO PLEAD

TO: James I. Devine, Esquire
The Palladian
509 Swede Street
Norristown, PA 19401

You are hereby notified to plead to the enclosed Answer with Affirmative
Defenses within twenty (20) days from service thereof or a default judgment may be
entered against you.

KILCOYNE & ASSOCIATES, LLC

MICHAEL O. PITT, ESQUIRE
Attorney for Defendants,
Michael Picariello, M.D.
Sarah Fowler, M.D. and
Ear, Nose & Throat Chester County, Inc.

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No. 02-3641

**ANSWER WITH AFFIRMATIVE DEFENSES OF DEFENDANTS, MICHAEL
PIACARIELO, MD., SARAH FOWLER, M.D. AND EAR, NOSE AND THROAT
ASSOCIATES OF CHESTER COUNTY, INC., TO PLAINTIFF'S COMPLAINT**

1. Denied. After reasonable investigation, answering Defendants are without sufficient knowledge or information to allow them to form a belief as to the truth of the averments in paragraph One (1) of plaintiff's Complaint, and therefore defendants demand strict proof thereof at trial, if relevant.

2. The allegations contained in paragraph Two (2) do not apply to answering defendants.

3. Admitted in part; denied in part. It is admitted that Defendant Picariello is an ENT physician practicing medicine at the office address indicated. It is also admitted that at the times medical care is rendered to the Plaintiff, Defendant Picariello was an employee of co-defendant, Ear, Nose and Throat Associates of Chester County. The remaining allegations of this paragraph are denied as improper legal conclusions and strict proof thereof is demanded at trial if relevant.

4. Admitted in part; denied in part. It is admitted that Defendant Fowler is an ENT physician licensed to practice medicine in the Commonwealth of Pennsylvania and practices medicine at the address indicated. It is further admitted that Defendant Fowler was an employee of Ear, Nose and Throat Associates of Chester County. The remaining allegations of paragraph Four (4) are denied as improper conclusions and strict proof thereof is demanded at trial if relevant.

5. Admitted.

6. The allegations contained in paragraph Six (6) do not apply to answering defendants.

7 - 26. Denied. Pursuant to Pennsylvania Rule of Civil Procedure 1029(e), no further response is required.

27. Denied. It is specifically denied that answering defendants were negligent. To the contrary, at all times relevant, answering defendants rendered reasonable and appropriate medical care to the patient. Furthermore, it is specifically denied that any action or inaction by answering defendants caused harm to the patient and strict proof thereof is demanded at trial if relevant.

COUNT I

28. Answering defendants hereby incorporate answers to paragraphs One (1) through Twenty-Seven (27) inclusive as though fully set forth at length herein.

29. The allegations contained in paragraph Twenty-Nine (29) do not apply to answering defendant.

WHEREFORE, answering defendants demand judgment in their favor and against plaintiff together with attorneys' fees and costs.

COUNT II

30. Answering defendants hereby incorporate answers to paragraphs One (1) through Twenty-Nine (29) inclusive as though fully set forth at length herein.

31. Denied. It is specifically denied that answering defendants were negligent. To the contrary, at all times relevant, answering defendants rendered reasonable and appropriate medical care to the patient. Furthermore, it is specifically denied that any action or inaction by answering defendants caused harm to the patient and strict proof thereof is demanded at trial if relevant.

WHEREFORE, answering defendants demand judgment in their favor and against plaintiff together with attorneys' fees and costs.

COUNT III

32. Answering defendants hereby incorporate answers to paragraphs One (1) through Thirty-One (31) inclusive as though fully set forth at length herein.

33. Denied. It is specifically denied that answering defendants were negligent. To the contrary, at all times relevant, answering defendants rendered reasonable and appropriate medical care to the patient. Furthermore, it is specifically denied that any action or inaction by answering defendants caused harm to the patient and strict proof thereof is demanded at trial if relevant.

WHEREFORE, answering defendants demand judgment in their favor and against plaintiff together with attorneys' fees and costs.

COUNT IV

34. Answering defendants hereby incorporate answers to paragraphs One (1) through Thirty-Three (33) inclusive as though fully set forth at length herein.

35. Denied. The allegations contained in paragraph Thirty-Five (35) of plaintiff's Complaint are conclusions of law to which the Pennsylvania Rules of Civil Procedure require no responsive pleading, are therefore denied, and strict proof thereof is demanded at trial, if relevant.

WHEREFORE, answering defendants demand judgment in their favor and against plaintiff together with attorneys' fees and costs.

COUNT V

36. Answering defendants hereby incorporate answers to paragraphs One (1) through Thirty-Five (35) inclusive as though fully set forth at length herein.

37 – 38. The allegations contained in paragraphs Thirty-Seven (37) through Thirty-Eight (38) do not apply to answering defendants.

WHEREFORE, answering defendants demand judgment in their favor and against plaintiff together with attorneys' fees and costs.

FIRST AFFIRMATIVE DEFENSE

39. At all times material hereto, answering defendant's treatment of the plaintiff was in accordance with accepted standards of medical care at the time and place of the treatment.

SECOND AFFIRMATIVE DEFENSE

40. The Complaint, in whole or in part, fails to state a cause of action upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

41. If plaintiff sustained the injuries alleged, which injuries are specifically denied, said injuries may have been the result of the negligent or careless acts and/or

omissions of plaintiff and/or other persons and/or entities over whom answering defendant exercised no control.

FOURTH AFFIRMATIVE DEFENSE

42. Plaintiff's claims may be barred or the amounts recoverable there from reduced by operation of the Pennsylvania Comparative Negligence Act. 42 Pa.C.S.A. Section 7102 et seq.

FIFTH AFFIRMATIVE DEFENSE

43. Plaintiff's claims may be barred by the doctrine of assumption of risk.

SIXTH AFFIRMATIVE DEFENSE

44. If there is a judicial determination that Pa.R.C.P. 238 is unconstitutional, said constitutionality being expressly challenged as a violation of the due process and the equal protection clauses of the 14th Amendment of the United States Constitution; 42 U.S.C. Section 1983; Article I, Section 1, 6, 11, 26; and Article V, Section 10(c) of the Pennsylvania Constitution, then payment of interest shall be suspended for any period of delay not occasioned by answering defendant.

WHEREFORE, answering defendants demand judgment in their favor and against plaintiff together with attorneys' fees and costs.

KILCOYNE & ASSOCIATES, LLC

MICHAEL O. PITT, ESQUIRE
Attorney for Defendants,
Michael Picariello, M.D.
Sarah Fowler, M.D. and
Ear, Nose & Throat Chester County, Inc.

VERIFICATION

I, Michael Picariello, M.D., make this verification subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities. The attached Answer with New Matter is based upon information which I have furnished to my counsel and information which has been gathered by my counsel in preparation for the defense of this lawsuit. The language contained in the Answer with New Matter is that of counsel and not of me. I have read the Answer with New Matter and, to the extent that it is based upon information which I have given to my counsel, it is true and correct to the best of my knowledge, information, and belief. To the extent that the contents of the Answer with New Matter are that of counsel, I have relied upon my counsel in making this verification.

MICHAEL PICARIELLO, M.D.
Ear, Nose & Throat of Chester County, Inc.

Dated: _____

184-632.MOP

VERIFICATION

I, Sarah Fowler, M.D., make this verification subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities. The attached Answer with New Matter is based upon information which I have furnished to my counsel and information which has been gathered by my counsel in preparation for the defense of this lawsuit. The language contained in the Answer with New Matter is that of counsel and not of me. I have read the Answer with New Matter and, to the extent that it is based upon information which I have given to my counsel, it is true and correct to the best of my knowledge, information, and belief. To the extent that the contents of the Answer with New Matter are that of counsel, I have relied upon my counsel in making this verification.

SARAH FOWLER, M.D.

Dated: _____

184-632.MOP

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CERTIFICATE OF SERVICE

I, Michael O. Pitt , Esquire, attorney for Defendant, Michael Picariello, M.D.,
Sarah Fowler, M.D. and Ear, Nose & Throat of Chester County, Inc., hereby certify that a
true and correct copy of the, Answer with Affirmative Defenses, were mailed to all
counsel of record by first class mail, postage prepaid:

James I. Devine, Esquire
The Palladian
509 Swede Street
Norristown, PA 19401
(610) 292-9300

Amalia V. Romanowicz, Esquire
1800 JFK Blvd., 19th Floor
Philadelphia, PA 19103
(215) 587-1155

Cathy A. Wilson, Esquire
1500 Lancaster Avenue
Paoli, PA 19301
(610) 270-4712

DATE: _____

MICHAEL O. PITT, ESQUIRE

VERIFICATION

I, Michael O. Pitt, Esquire, hereby depose and state that I am the attorney for Defendants, Michael Picariello, M.D., Sarah Fowler, M.D. and Ear, Nose and Throat Associates of Chester county, Inc., in the action herein, that I have reviewed the foregoing Answer to Plaintiff's Complaint, and that the facts contained therein are true and correct to the best of my information and belief. I understand that the statements made herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsifications to authorities.

MICHAEL O. PITT, ESQUIRE

Date: